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FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10
11 UNIVERSAL CITY STUDIOS, INC.)

NO. CV 75-3526-R

12 Plaintiff,)

13 vs.)

14 RKO GENERAL, INC., et al.,)

15 Defendants.)

AMENDED COUNTERCLAIM

16
17 RKO GENERAL, INC.,)

OF DEFENDANT

18 Counterclaimant,)

DINO DE LAURENTIIS

19 vs.)

CORPORATION

20 UNIVERSAL CITY STUDIOS,)

21 Counterdefendant.)

22
23 DINO DE LAURENTIIS CORPORATION,)
24 INC., a corporation,)

25 Counterclaimant,)

26 vs.)

27 UNIVERSAL CITY STUDIOS, INC.,)
28 a corporation,)

29 Counterdefendant.)

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1 Defendant Dino De Laurentiis Corporation, for itself and
2 no other party herein, counterclaims against plaintiff Universal
3 City Studios, Inc., as follows:

4
5 FIRST COUNT

6 (Infringement of Statutory Copyright)

7
8 1. This action arises under the Copyright Law of the
9 United States, Title 17 United States Code §§ 1 et seq. as a claim
10 for infringement and substantial and related claims for unfair
11 competition. Jurisdiction is conferred on this Court by Title 28
12 United States Code § 1338.

13
14 2. Defendant and counterclaimant Dino De Laurentiis
15 Corporation ("DDLDC") is a corporation duly organized and existing
16 under the laws of Delaware and is qualified to do and is doing
17 business in the County of Los Angeles, State of California. At
18 all times mentioned herein, DDLDC was and now is an independent
19 motion picture producer of major stature engaged in the financing,
20 production, and distribution of theatrical motion pictures. DDLDC
21 has a reputation in said industry for producing motion pictures
22 of both great quality and high profitability.

23
24 3. DDLDC is informed and believes and based thereon
25 alleges that plaintiff and counterdefendant Universal City Studios,
26 Inc. ("Universal") is a Delaware corporation qualified to do and
27 doing business in the State of California.

28
29 4. DDLDC is informed and believes and based thereon
30 alleges that RKO General, Inc. ("RKO"), a defendant and counter-
31 claimant in this action, is a Delaware corporation qualified to do
32 ///

1 and doing business in the State of California.
2

3 5. Prior to 1933, RKO created and produced an original
4 motion picture photoplay entitled "King Kong" ("the original
5 photoplay"). DDLC is informed and believes and on that basis
6 alleges that said original photoplay is wholly original with RKO
7 and is copyrightable subject matter under the laws of the United
8 States. Prior to May 9, 1975, RKO complied in all respects with
9 the Copyright Law of the United States and all other laws governing
10 copyrights and secured the exclusive rights and privileges in and
11 to the copyright of said original photoplay and applied for and
12 received from the Register of Copyrights a certificate of registra-
13 tion of a claim to copyright identified as No. L 3794 and, on
14 December 5, 1960, obtained a renewal copyright therein, identified
15 as No. R 267264.
16

17 6. At all times mentioned herein said original photo-
18 play, "King Kong," has been published either by RKO or under its
19 authority and license in conformity with the provisions of the
20 Copyright Law of the United States and all other laws governing
21 copyrights. At all times mentioned herein, and subject to the
22 exclusive license hereinafter set forth, RKO was and still is the
23 sole proprietor of all rights, title and interest in and to the
24 copyright of said original photoplay.
25

26 7. On or about May 9, 1975 DDLC reached an agreement
27 with RKO by which RKO sold and DDLC purchased the exclusive right
28 and license to copy, produce, sell, and distribute a remake of the
29 original photoplay, and to use the name, title, and character
30 "Kong" or "King Kong" in connection with the production, advertis-
31 ing, and promotion of said remake. Pursuant to and as a part of
32 ///

1 said license, DDLC obtained and still has the exclusive right to
2 copy the story and expression of the original photoplay in connec-
3 tion with said remake.

4
5 8. Pursuant to its said exclusive license, at all times
6 after May 9, 1975 DDLC has expended and continues to expend con-
7 siderable time and money to remake the original photoplay, utili-
8 zing the name, characters, story, and expression of said original
9 photoplay. At great expense, DDLC has hired a screenwriter, direc-
10 tors, and actors, has released major advertising and publicity, has
11 developed a screenplay, has made film tests, has traveled exten-
12 sively in surveying locations, and has developed "special effects,"
13 all with respect to said production.

14
15 9. At all times mentioned herein Universal knew and was
16 on notice of all of the matters stated in paragraphs 5 through 8
17 inclusive hereinabove.

18
19 10. DDLC is informed and believes and based thereon
20 alleges that after May 9, 1975 Universal caused to be written a
21 screenplay (the "Universal screenplay"), unlawfully copying and
22 infringing upon the copyrighted original photoplay, including its
23 story and expression. Universal has publicly announced its inten-
24 tion to produce, sell, and distribute a remake of the original
25 photoplay based upon said unlawful screenplay, or a draft or
26 variation thereof. A true and correct copy of the Universal
27 screenplay is attached hereto as Exhibit "A" and by this reference
28 is incorporated herein. The original photoplay is a motion picture
29 which counterclaimant Dino De Laurentiis will make available and
30 exhibit to the Court.

31
32 11. Universal's said unlawful acts as alleged herein

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1 above are causing and, unless enjoined and restrained by this
2 Court, will continue to cause DDLC great and irreparable injury
3 which cannot be adequately compensated or measured in money. DDLC
4 has no adequate remedy at law. Pursuant to 17 U.S.C. § 101(a) and
5 § 112, DDLC is entitled to preliminary and permanent injunctions
6 restraining and enjoining Universal's infringement of copyright.
7

8 12. As a direct and proximate result of Universal's
9 said unlawful acts as alleged hereinabove, DDLC has suffered
10 damages in an amount which it cannot now ascertain. DDLC is
11 informed and believes, and based thereon alleges, that it has
12 suffered such damages in an amount of not less than \$40,000,000.
13 Pursuant to 17 U.S.C. § 101(b) DDLC is entitled to recover from
14 Universal such damages as DDLC has suffered by reason of Univer-
15 sal's infringement of copyright, as well as all profits which
16 Universal may have or shall derive as a result of said infringe-
17 ment. DDLC will seek leave to amend this complaint to allege the
18 specific amount of such damages when such amount has been ascer-
19 tained.
20

21 13. By virtue of Universal's said unlawful acts,
22 Universal has been guilty of oppression, fraud, and malice and
23 DDLC, in addition to its actual damages, is entitled by reason
24 thereof to recover \$50,000,000 in damages for the sake of example
25 and by way of punishing Universal.
26

27 14. Pursuant to 17 U.S.C. § 101(c) and § 101(d), DDLC
28 is entitled to an order of this Court requiring Universal to
29 deliver up on oath to be impounded during the pendency of this
30 action, and to be destroyed upon such terms and conditions as
31 this Court may prescribe, all materials which infringe upon the
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1 copyright in the original photoplay "King Kong."

2
3 15. Pursuant to 17 U.S.C. § 116, DDLC is entitled to
4 recover, in addition to all of its monetary recovery, its reason-
5 able attorneys' fees incurred in commencing and prosecuting this
6 counterclaim. DDLC has employed attorneys to represent it in this
7 action and has incurred and will incur in the future, expenses for
8 attorneys' fees and other costs in connection with this action.
9 DDLC will ask leave of this Court to amend this complaint to
10 allege the exact amount of said attorneys' fees, costs, and
11 expenses when said amount has been fully ascertained.

12
13 SECOND COUNT

14 (Unfair Competition)

15
16 16. DDLC refers to and herein incorporates by reference
17 each and every allegation contained in paragraphs 1 through 10
18 inclusive hereinabove.

19
20 17. At all times mentioned herein the reputation of
21 the original photoplay and the name and visual depiction of the
22 character "Kong" or "King Kong" was and still is widely known by
23 the public both in the United States and abroad. At all times
24 since its original release, the original photoplay has been
25 available for commercial public viewing, either in motion
26 picture theatres or on television, and has received and continues
27 to receive considerable critical acclaim and financial success.
28 DDLC is informed and believes and based thereon alleges, that at
29 all times since the original release of the original photoplay,
30 RKO has regularly licensed the use of the title "King Kong" and

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1 the name and visual depiction of "Kong" or "King Kong," for
2 commercial value, including licenses to plaintiff for two separate
3 motion pictures using the name, title, and character "King Kong"
4 or "Kong." As a result of said critical acclaim and widespread
5 recognition, the reputation of the original photoplay, including
6 the public recognition and good will attaching to it, the title
7 "King Kong," and the name and visual depiction of the character
8 "Kong" or "King Kong" have acquired a secondary meaning of sub-
9 stantial commercial value.

10
11 18. The Universal screenplay unlawfully appropriates
12 said title, reputation, name, and visual depiction. In addition,
13 Universal, in order to profit from said unlawful appropriation,
14 has publicly advertised and will in the future cause to be issued
15 advertisements concerning its intention to produce, under its own
16 name, a remake of the original photoplay. Each said advertisement
17 and press release either visually depicts the character "King
18 Kong" or "Kong" or refers to that title, name, or character.
19 Universal has thereby appropriated, continues to appropriate, and
20 will in the future appropriate the name, title, visual depiction,
21 reputation, public recognition, and good will accorded the original
22 photoplay and the fruit of RKO's work, expenditures, skills,
23 experience, and knowledge, all of which are the exclusive property
24 of DDLC by virtue of the license described in paragraph 7 above.
25 Universal has paid nothing and its said unlawful appropriation
26 is without any license, consent, or authority from DDLC or RKO or
27 any other person who may lawfully give such license, consent, or
28 authority.

29
30 19. The Universal screenplay and Universal's said

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1 advertisements and press releases are calculated, designed,
2 intended to, and do cause confusion as to the identity and content
3 of both the original photoplay and the remake now in production
4 by DDLC and as to the ownership of the name, visual depiction of
5 the character "Kong" or "King Kong," and the reputation, public
6 recognition, and good will accorded the original photoplay. Said
7 advertisements and press releases unlawfully and wrongfully use
8 and trade upon said name, and visual depiction, reputation, public
9 recognition, and good will, and constitute a wrongful, unlawful,
10 unjust, and unconscionable appropriation and taking by Universal
11 for its own use of said property.
12

13 20. The screenplay and photoplay which is now in
14 production by DDLC is of the highest quality and utilizes special
15 effects which have been developed and perfected at great expense
16 to DDLC.
17

18 21. By virtue of Universal's said unlawful acts,
19 Universal has or will unjustly enrich itself at the expense of
20 DDLC. Said acts defraud and cheat DDLC, constitute an appropri-
21 tion and invasion of DDLC's property rights, jeopardize the repu-
22 tation of DDLC as a producer of quality motion pictures, and
23 constitute unfair competition with DDLC.
24

25 22. Universal's said unlawful acts as alleged herein
26 above are causing and, unless enjoined and restrained by this
27 Court, will continue to cause DDLC great and irreparable injury
28 which cannot be adequately compensated or measured in money. DDLC
29 has no adequate remedy at law.

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1 23. As a direct and proximate result of Universal's
2 unlawful acts as alleged hereinabove, DDLC has suffered damages
3 in an amount which it cannot now ascertain. DDLC is informed and
4 believes, and based thereon alleges, that it has suffered such
5 damages in an amount of not less than \$40,000,000. DDLC will seek
6 leave to amend this complaint to allege the specific amount of
7 such damages when such amount has been ascertained.
8

9 24. By virtue of Universal's said unlawful acts,
10 Universal has been guilty of oppression, fraud, and malice and
11 DDLC, in addition to its actual damages, is entitled by reason
12 thereof to recover \$50,000,000 in damages for the sake of example
13 and by way of punishing Universal.
14

15 THIRD COUNT

16 (Interference with Prospective Advantage)

17
18 25. DDLC refers to and herein incorporates by reference
19 each and every allegation contained in paragraphs 1 through 10
20 inclusive and 17 through 20 inclusive hereinabove.
21

22 26. By reason of the license described in paragraph 7
23 above, DDLC is in a position to realize substantial future economic
24 benefits from distribution or sale of its remake of the original
25 photoplay. By virtue of Universal's unlawful acts as described
26 hereinabove, Universal is unlawfully interfering with the prospec-
27 tive business interests and advantages of DDLC.
28

29 27. As a direct and proximate result of Universal's
30 said unlawful acts, DDLC will suffer damages in an amount which
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1 it cannot now ascertain. DDLC is informed and believes and based
2 thereon alleges that it will suffer such damages in an amount of
3 not less than \$40,000,000. DDLC will seek leave to amend this
4 complaint to allege the specific amount of such damages when such
5 amount has been ascertained.

6
7 28. By virtue of Universal's said unlawful acts,
8 Universal has been guilty of oppression, fraud, and malice and
9 DDLC, in addition to its actual damages, is entitled by reason
10 thereof to recover \$50,000,000 in damages for the sake of example
11 and by way of punishing Universal.

12
13 FOURTH COUNT

14 (Constructive Trustee)

15
16 29. DDLC refers to and herein incorporates by reference
17 each and every allegation contained in paragraphs 1 through 10
18 inclusive and paragraphs 17 through 20 inclusive hereinabove.

19
20 30. By virtue of Universal's said unlawful acts
21 described hereinabove, Universal will hold all proceeds which it
22 will receive, directly or indirectly, from the production, sale,
23 and distribution of the Universal photoplay as a constructive
24 trustee for the use and benefit of DDLC. DDLC requests the Court
25 to declare Universal such a constructive trustee and to order
26 Universal to convey any such proceeds to DDLC.

27
28 WHEREFORE, counterclaimant DDLC prays for judgment
29 against counterdefendant Universal as follows:

- 30
31 1. That Universal and its agents, servants, employees,
32

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1 and all persons acting in concert with them, and each of them, be
2 enjoined and restrained, preliminarily and permanently, from in
3 any way infringing the copyright in the original motion picture
4 photoplay "King Kong" and

5
6 (a) From casting, filming, editing, recording,
7 financing, producing, or distributing for exhibition any motion
8 picture photoplay based upon the Universal screenplay, or any
9 draft or variation of said screenplay;

10
11 (b) From building sets, developing special effects,
12 developing working models or costumes of the character "Kong" or
13 "King Kong," and from using, filming, or employing in any way such
14 sets, special effects, or working models or costumes already built
15 or developed;

16
17 (c) From casting, filming, editing, recording,
18 financing, producing, or distributing for exhibition any motion
19 picture photoplay utilizing or containing the character, title, or
20 story of "Kong" or "King Kong";

21
22 (d) From using the character, title, or name "Kong"
23 or "King Kong" in any motion picture or motion picture photoplay
24 or screenplay, or from advertising, publicizing, announcing, repre-
25 senting, or publicly stating in any fashion that it is making, or
26 is entitled to make, cast, film, edit, record, finance, produce,
27 or distribute for exhibition any motion picture photoplay utilizing
28 or containing the character, title, or story of "Kong" or "King
29 Kong."

30
31 2. That this Court forthwith issue an order directing
32 counterdefendant Universal

1 (a) To show cause why a preliminary injunction
2 should not be issued and granted so enjoining and restraining
3 counterdefendant Universal and its agents, servants, employees,
4 and all persons acting in concert with them, and each of them,
5 as set forth in the preceding paragraph 1, pending the hearing
6 and determination of this action, or further order of the Court,
7 and

8
9 (b) Further directing counterdefendant Universal
10 to deliver on oath during pendency of this action all materials
11 which infringe upon the copyright in the original motion picture
12 photoplay "King Kong";
13

14 3. That this Court issue an order directing destruction
15 of all materials delivered on oath by counterdefendant Universal
16 as infringing upon the copyright in the original motion picture
17 photoplay "King Kong";
18

19 4. For damages on the first, second, and third counts
20 herein in the amount of \$40,000,000 or according to proof;
21

22 5. For damages on the first, second, and third counts
23 herein in the amount of \$50,000,000, by way of punishing counter-
24 defendant Universal;
25

26 6. That the Court declare that counterdefendant
27 Universal holds or will hold all proceeds which it directly or
28 indirectly receives from the production, sale, or distribution of
29 the Universal photoplay or any motion picture photoplay utilizing
30 or containing the character, title, or story of "Kong" or "King"
31 ///

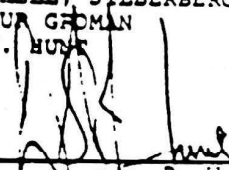
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1 Kong," as constructive trustee for the use and benefit of counter-
2 claimant DDLC, and that said counterdefendant be ordered to convey
3 said proceeds to said counterclaimant;

4
5 7. For counterclaimant DDLC's costs of suit incurred
6 herein, together with its reasonable attorneys' fees as provided
7 by law; and

8
9 8. Such other and further relief as to the Court may
10 seem proper.

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12 MITCHELL, SILBERBERG & KNUPP
13 ARTHUR GEDMAN
14 D. W. HUNT

15 By  _____
16 D. W. Hunt
17 Attorneys for Dino De Laurentiis
18 Corporation
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